

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-3788

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL GISVOLD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

HOOVER, J. Michael Gisvold appeals a judgment convicting him of operating while under the influence of an intoxicant in violation of § 346.63(1)(a), STATS. On appeal, Gisvold contends the trial court erred by (1) denying his motion to suppress statements made to police in violation of his Fifth Amendment rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), (2) denying his motion to suppress evidence on the basis that the arresting officer

lacked probable cause to arrest Gisvold for operating while intoxicated, and (3) requiring Gisvold to file a notice of appeal within three days of sentencing. This court rejects Gisvold's assertions and affirms the judgment.

On October 28, 1996, police sergeant Martin Jensen was dispatched to the scene of a two-vehicle accident on Coulee Road in Hudson, Wisconsin. A witness reported that a silver or gray Honda with "Quick Silver Deliver" on the side panel sped around a curve on Coulee Road, went out of control and over the curb, proceeded back over the curb and spun out of control, colliding with a vehicle driven by Angela Carter. The witness walked over to the vehicle and asked the driver, a white-haired male between the age of fifty and sixty years, if he was okay. The driver of the vehicle backed up and fled the scene of the accident. The vehicle's license plate fell off at the scene of the accident.

Jensen ran a check on the license plate, which was registered to Drue Gisvold at 864 Tamarack Lane in Hudson. Jensen proceeded to the address, pulled up to the attached garage and peered through the windows, observing a vehicle matching the description of the hit and run vehicle. Jensen then rang the doorbell, and Michael Gisvold, who matched the description of the hit and run driver, answered the door. Gisvold appeared disheveled. His shirt was wrinkled, his tie was shifted and there was a bloodstained tear in his right pant leg. Jensen asked Gisvold twice if he was okay. Gisvold informed Jensen that "he had made a telephone call to an attorney, [and] was waiting for a call back before he reported the accident."

Jensen next asked Gisvold for his driver's license. During this conversation, Jensen observed a strong odor of alcohol coming from Gisvold. Gisvold's eyes were bloodshot and glassy, and his speech was slurred. Jensen

asked Gisvold if he had been drinking since the accident. Gisvold stated that he had “one glass of red wine.” Jensen then asked Gisvold to step outside his residence to do field sobriety tests. After completion of the tests, Gisvold was placed under arrest for operating while intoxicated and hit and run.

Gisvold was charged with two counts hit and run/injury in violation of §§ 346.67(1) and 346.74(5)(b), STATS., and one count hit and run/attended vehicle in violation of §§ 346.67(1)(a) and 346.74(5)(a). Gisvold also received a civil citation for operating while intoxicated, first offense, in violation of § 346.63(1)(a), STATS. In a plea bargain with the State, Gisvold pled no contest to hit and run/attended and operating while intoxicated.

Gisvold only appeals his conviction for operating while intoxicated. He first asserts that the trial court erred by failing to suppress his statements, which were obtained in violation of his Fifth Amendment right to counsel under *Miranda*. This court finds Gisvold’s argument without merit, however, since his charge of operating while intoxicated was a civil forfeiture. The Fifth Amendment to the United States Constitution provides: “No person ... shall be compelled in any *criminal* case to be a witness against himself” (Emphasis added.) This provision governs both state and federal criminal proceedings. *Village of Menomonee Falls v. Kunz*, 126 Wis.2d 143, 147, 376 N.W.2d 359, 361 (Ct. App. 1985). As such, *Miranda* is an exclusionary rule exclusively in criminal proceedings. *Kunz*, 126 Wis.2d at 147, 376 N.W.2d at 361-62. Although forfeiture proceedings have the appearance of criminal proceedings, they are inherently civil in nature. *Id.* Because a forfeiture action is a civil action, *Miranda*’s requirements do not apply. *Kunz*, 126 Wis.2d at 148, 376 N.W.2d at

362. Therefore, Gisvold's statements were not made in violation of his Fifth Amendment rights under *Miranda* and were properly admitted.¹

Gisvold next contends that the trial court erred by denying Gisvold's motion to suppress evidence on the basis that the officer lacked probable cause to arrest Gisvold for operating while intoxicated. The issue whether the officer had probable cause is a question of law that this court reviews de novo. *State v. Babbitt*, 188 Wis.2d 349, 356, 525 N.W.2d 102, 104 (Ct. App. 1994). Probable cause exists where, under the totality of the circumstances, the "arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe ... that the defendant was operating a motor vehicle under the influence of an intoxicant." *Id.* (quoting *State v. Nordness*, 128 Wis.2d 15, 35, 381 N.W.2d 300, 308 (1986)). "It is not necessary that the evidence giving rise to such probable cause be sufficient to prove guilt beyond a reasonable doubt, nor must it be sufficient to prove that guilt is more probable than not." *State v. Paszek*, 50 Wis.2d 619, 625, 184 N.W.2d 836, 839-40 (1971). It is sufficient if the officer concludes that the "defendant probably committed [the offense]." *Babbitt*, 188 Wis.2d at 357, 525 N.W.2d at 104 (quoting *State v. Koch*, 175 Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993)).

Here, the undisputed facts reveal that: (1) Jensen was dispatched to the location of a two-vehicle accident where Gisvold's vehicle spun out of control and hit another vehicle; (2) Gisvold fled the scene of the accident; (3) upon finding Gisvold at his home approximately fifty minutes after the accident, Jensen

¹ This court does not need to address whether Gisvold's Fifth Amendment rights were violated in respect to his criminal conviction because he is not challenging his conviction for hit and run/attended.

observed that Gisvold's eyes were glassy and bloodshot and his speech was slurred; (4) Gisvold informed Jensen that he had "one glass of red wine" since the accident; and (5) Gisvold appeared intoxicated while performing the field sobriety tests. These facts are sufficient to constitute probable cause necessary to support Gisvold's arrest for operating while intoxicated. See *Babbitt*, 188 Wis.2d at 357, 525 N.W.2d at 104. Based on Gisvold's appearance and apparent level of intoxication, together with the impairment implied by his manner of driving and flight, it was reasonable for Jensen to conclude that Gisvold was "probably" operating his vehicle while intoxicated fifty minutes earlier.

Last, Gisvold argues that the trial court violated his due process rights by requiring him to file a notice of appeal within three days of the sentencing date. However, Gisvold does not discuss how his due process rights were violated, nor does he support this assertion with legal authority. Under § 809.19(1)(e), STATS., proper appellate procedure requires an argument to contain the contention of the party, the reasons therefor, with citation of authorities, statutes and the part of the record relied on. *State v. Shaffer*, 96 Wis.2d 531, 545, 292 N.W.2d 370, 378 (Ct. App. 1980). Inadequate arguments will not be considered by this court. *Id.* at 546, 292 N.W.2d at 378. Hence, this court declines to address this issue.

In conclusion, this court finds Gisvold's arguments without merit. Accordingly, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

